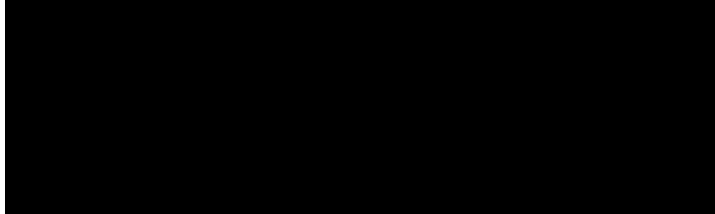


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U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services



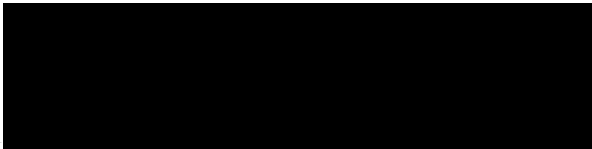
FILE: SRC 02 161 52638 Office: TEXAS SERVICE CENTER Date: **APR 02 2004**

IN RE: Petitioner:  
Beneficiary:

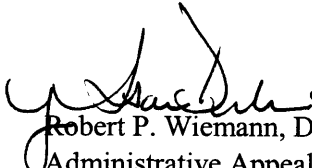


PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H) (i) (b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i) (b)

ON BEHALF OF PETITIONER:



This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

ADMINISTRATIVE APPEALS OFFICE  
425 I STREET, N.W.  
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**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a new branch of an existing corporation that is being set up to provide healthcare staffing. It seeks to employ the beneficiary as an operations manager. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel asserts that the position is a specialty occupation and submits further documentation for the record.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the petitioner's letter of support, dated April 1, 2002; (3) the director's October 5, 2002 request for additional evidence; (4) the petitioner's letter, dated December 10, 2002, that responds to the director's request; (5) the director's denial letter; and (6) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an operations manager. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and the petitioner's letter in response to the director's request for further evidence. According to the initial petition, the beneficiary would perform duties that entail: managing the operations department of a new healthcare staffing agency; participating in the development and utilization of job development methods to promote business for the company; preparing budgets and operations reports to determine requirement for increasing profits; and resolving customer complaints. In the petitioner's letter of support, it provided a more specific breakdown of the beneficiary's duties. Some more specific job duties included ensuring maintenance and repair of facilities and equipment; negotiating leases; directing the hiring, training, and evaluation of employees; and approving requests for equipment, materials, and supplies. The petitioner stated that the position required a minimum of a bachelor's degree with twelve years of experience in the field.

The director found that the proffered position was not a specialty occupation and referred to the description of office and administrative support supervisors and managers in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The petitioner had previously submitted this excerpt to the record. Based on this document, the director noted that the position of operations manager did not require a baccalaureate degree for entry into the position. In addition, the director determined that the petitioner had not established any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the position is a specialty occupation and submits additional job vacancy announcements and excerpts on operations managers from the Department of Labor's publication, *Occupational Information Network, 2002 (O'NET)* and also from *America's Career Infonet*. Counsel also submits IRS Form 941, Employer's Quarterly Federal Tax Return, for the quarter ending March 31, 2003, as documentary evidence that the petitioner has now hired other employees.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The petitioner originally submitted *Handbook* information on administrative services supervisors and managers, and on appeal, submits information on operations managers. Both of these classifications appear similar in duties and responsibilities. As correctly noted by the director, the *Handbook* classification referred to by the petitioner does not require a baccalaureate degree for entry into the position. In addition, while the *America's Career Infonet* documentation identifies the position of manager as an occupation that requires a bachelor's degree or higher, the website does not identify any specific specialty that

is required for entry into the position. As previously stated, CIS interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Thus, neither the *Handbook* nor the other DOL reports establish that the minimum requirement for the proffered position is a baccalaureate degree in a specific specialty. Without more persuasive evidence, the petitioner has not established that the proffered position in fact is a specialty occupation.

Regarding parallel positions in the petitioner’s industry, the petitioner submitted fifteen job vacancy announcements either in its response to the director’s request for further evidence or on appeal. These job announcements do not appear to be for parallel positions in similar firms. For example, the operations manager position for AWI/One-Stop Career Center involves direct management of employment services in a six-county area. Another employer, Alpha Therapeutic Corporation, manufactures lifesaving medications from human plasma. In addition, while the job vacancy announcements all state that a bachelor’s degree is required, only two appear to identify a specific academic specialty that is required for entry into the position. This documentation is insufficient to establish an industry-wide standard for the proffered position based on the academic requirements for parallel positions in similar firms. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The petitioner stated in its response to the director’s request for further evidence that it had no other individuals currently employed in the proffered position. Therefore the petitioner cannot meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Many of the duties listed by the petitioner are routine for any office setting. It should also be noted that the petitioner stated that it had no other employees at the time it submitted the I-129 petition for the beneficiary. On appeal, documentation was submitted that established that the petitioner had four employees as of the year 2003. Nevertheless, the record is devoid of any information as to the four employees’ jobs, work responsibilities and any interaction that the beneficiary might have with them on a supervisory or managerial basis. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director’s denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed. The petition is denied.